IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1575 of 1999
with
CIVIL REVISION APPLICATION No 1576 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL MANGUBEN WD/O ISHVARBHAIRAMCHANDRA

Versus

PATEL YOGESHBHAI LALBHAI

Appearance:

1. Civil Revision Application No. 1575 of 1999

MR SUNIL K SHAH for Petitioner No. 1
RULE SERVED for Respondent No. 1
RULE UNSERVED for Respondents No. 2,5
MR HARIT J BHATT for Respondent No. 3
RULE NOT RECD BACK for Respondent No. 3
DELETED for Respondents No. 4,6

CORAM : MR.JUSTICE SHARAD D.DAVE

Date of decision: 23/01/2002

ORAL JUDGEMENT

1. Both these civil revision applications are preferred against the order dated 30.8.99 passed by the learned M.A.C.T. (Aux.II) Ahmedabad (Rural) Mirzapur below exh. 14 in M.A.C.P. Darkhast No. 89/98 and 88/98 respectively dismissing the applications exh. 14 for relief to issue Jungam Warrant against the present respondent no. 3-insurance company.

2. The short facts of the case are as under :

The petitioners filed M.A.C.P.No. 259/96 and 258/96 respectively before the M.A.C.T.(Aux.V) Ahmedabad (Rural) at Mirzapur claiming for compensation for the accident occurred on 11.12.95. In the said petitions, applications for interim compensation under Sec. 140 of the Motor Vehicle Act were filed claiming Rs.25,000/each which applications were granted by order dated 20.11.98. As per the order, the respondents herein are liable to pay Rs.25,000/- along with running interest at the rate of 12% p.a. from the date of filing of main claim petition till realization and are liable jointly and severally. The total amount with interest of each petitioner comes to Rs.33,343.30ps., 50% of which only was deposited by the respondent no. 3 being Rs. 16,671.65 ps.

3. Thereafter, the petitioners filed applications dated 19.7.99 to issue a jungam warrant against the respondent no. 3 herein which was served on 26.7.99 and the respondent no. 3 herein asked time upto 28.7.99 to deposit the amount. But the respondent no. 3 filed an application on 30.7.99 behind the back of the petitioners for staying the order of jungam warrant which was granted. Therefore, the petitioners filed applications exh. 14 on 19.8.99 to reissue the jungam warrant against respondent no. 3 as only 50% amount was deposited. These applications were dismissed on 30.8.99 which are under challenge in these civil revision applications.

4. At the time of hearing of the civil revision applications, L.A.Mr.S.K.Shah for the petitioners in both the applications has produced before me the order of this court dated 8.3.99 (Coram : M.S.Shah, J) in Civil Revision Application no. 1326 of 1998 in case of Ransur Kana Jam V/s New India Assurance Co.Ltd. wherein brother Judge Mr.Shah has relied on the judgment of Apex Court and came to a conclusion that what was joint and several was the liability of driver, owner and insurer of one particular vehicle; the joint and several liability was

not cast on the drivers,owners and the insurance company of the two vehicles.

5. According to Mr.Shah L.A. for the petitioners of both the applications the joint and several liability is to be termed as amount to be deposited by the insurance company alone and the interpretation done by the Executing Court is bad in law and cannot be tenable in the eye of law and thereby the executing court has travelled beyond its jurisdiction not vested in it and ultimately prayed for allowing these revision applications by setting aside the order of the tribunal.

6. Against the aforesaid submissions, Mr.D.V.Shah L.A. for Mr.H.J.Bhatt L.A. for the insurance company stated that the tribunal allowing the application for interim compensation under sec. 140 of the M.V.Act has stated in its order as under : "The opponents no. 2 & 3 are liable to pay 50% amount of interim compensation, jointly and severally and the opponent no. 5 is liable to pay 50% amount of interim compensation. The opponents no. 2,3 & 5 are hereby directed to deposit the above amount of award within thirty days from the date of this order." Therefore, Mr.Shah L.A. for the insurance company submits that though the words jointly and severally are mentioned, the aforesaid order clearly states that the liability of the insurance company is 50% and no more.

7. I am of the opinion that the statement of the respondent no. 3 cannot be accepted. It is true that from the aforesaid order it appears that the tribunal has ordered the opponent no. 2 & 3 to pay 50% of the amount, however, if we read the order as a whole, it is crystal clear that it is joint and several liability of all and in this view of the matter the Darkhast filed by these petitioners for issuing Jungam warrant to the respondent no. 3 for the rest of the amount is proper and that the execution court has no power to stay the same. In view of the aforesaid discussion, I am of the opinion that the tribunal has erred in coming to the conclusion that 50% amount is to be paid by the insurance company and therefore the said orders of the tribunal at exh. 14 in both the civil revision applications are hereby quashed and set aside and the trial court is hereby directed to issue jungam warrant to recover the remaining amount from the insurance company. Accordingly these civil revision applications are allowed with no order as to cost. Rule made absolute.

(SHARAD D DAVE, J)

srilatha